Calendar No. 1085

99TH CONGRESS
2d Session

SENATE

REPORT
99-529

DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL ACT OF 1986

OCTOBER 6, 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2611]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2611) to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF BILL

The bill, S. 2611, as reported, would improve efforts to monitor, assess, and reduce the adverse environmental impacts of driftnets used by commercial fishing vessels within the United States' 200-mile Exclusive Economic Zone (EEZ) and beyond that zone in waters off the coasts of the United States.

BACKGROUND AND NEEDS

Driftnets are plastic fishing nets measuring up to 30 miles in length that are suspended vertically in the water by floats at the surface and left to drift with winds and currents for the purpose of entangling fish in the webbing.

Increasing attention has been given to the harmful effects of driftnets on fish, marine mammals, seabirds, and other living marine resources that become entangled and die in the webbing, particularly in waters of the North Pacific Ocean where the number of Japanese, Taiwanese, and Korean commercial driftnet fishing vessels has increased dramatically over the past decade.

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On October 5, 1985, in recognition of the growing size of the commercial driftnet fishing fleets off the coasts of the United States and concern about their impact, the National Ocean Policy Study conducted an oversight hearing on driftnet fisheries issues. Testimony presented at the hearing provided information on the nature and extent of the driftnet fisheries and the pressing need for action to obtain more reliable information to assess and reduce their adverse impacts.

DRIFTNET FISHING FLEETS IN THE NORTH PACIFIC OCEAN

The driftnet fisheries of particular concern to the Committee are conducted in the North Pacific Ocean by vessels from Japan, Taiwan, and the Republic of Korea and are composed of distinct fleets designed to catch specific species, such as salmon, squid, marlin, or sailfish. Each vessel typically sets a driftnet in the water at dusk and hauls it out at dawn every day during the fishing season, which varies in duration from forty to more than seventy days of active fishing each year.

The Japanese conduct the only driftnet fishery designed to catch salmon. It includes a high seas fleet of 4 motherships and 172 catcherboats and a land-based fleet of 209 vessels which also fish on the high seas but must return to port with their catch rather than transferring it to motherships. Each of those 381 vessels sets a 9 mile long, 26 foot deep net. The combined Japanese salmon fleets set more than 3,400 miles of net every night. The Japanese driftnet squid fishery began in 1978 and involves 534 vessels, each of which sets a twenty to thirty mile long driftnet for a total of more than 10,000 miles of net every night. A third Japanese driftnet fishery targets marlin and other billfish. It involves 600 vessels, each of which sets a 6 to 7 mile long net for a total of more than 3,700 miles every night.

The Taiwanese driftnet fishery for squid began in 1980 with 12 vessels and now involves 146 vessels, each of which sets a 14 mile long driftnet for a total of more than 2,000 miles every night. The Taiwanese also conduct a driftnet fishery for sailfish and marlin but information on the number of vessels involved in that fishery is not available.

Finally, the 106 driftnet squid vessels of the Republic of Korea each set a 17 mile long driftnet for a total of 1,800 miles each night.

Taken together, approximately 1,700 driftnet vessels fishing in the North Pacific set at least 21,000 miles of net each day during their fishing seasons, for a total of more than 1 million miles each year.

IMPACTS OF DRIFTNETS

Driftnet fisheries affect the target species of fish as well as non-target fish, marine mammals, and seabirds that are incidentially caught in the nets and discarded.

Salmon

The fishing activities of the Japanese motherships and land-based salmon fleets are regulated under the International Conven-

tion for the High Seas Fisheries of the North Pacific Ocean, executed in May 1952 by the United States, Japan, and Canada to promote and coordinate scientific study relating to the fishery resources of the North Pacific Ocean and to conserve these resources, especially salmon, by regulating through the International North Pacific Fisheries Commission (INPFC) the Japanese high seas fleets that had developed following World War II. That Convention was amended by a Protocol in 1978 to reflect the establishment by each of the parties of 200-mile fishery conservation zones and to reduce the interception by the Japanese fleets of salmon originating in North America upon which Canadian and U.S. coastal fisheries are dependent. The Protocol reduced the total area in which Japanese salmon fishing could be conducted while permitting the Japanese mothership fleet to fish for salmon within a portion of the United States' 200-mile zone. Only those 172 vessels, of the approximately 1,700 vessels comprising the various driftnet fleets, are permitted to fish within the U.S. 200-mile zone.

Representatives of the National Marine Fisheries Service, State Department, and North Pacific Fishery Management Council testified that although many had believed that U.S.-origin salmon received adequate protection from the restrictions imposed by the Protocol, recent studies indicate that interception of U.S.-origin salmon, particularly valuable chinook salmon, were much higher than had been previously estimated. They estimated that the Japanese salmon fleets in recent years had caught about 1 million U.S.-origin salmon each year with significant loss to coastal fisheries and economies dependent upon sport, commercial, and subsistence use of local runs of the affected fish stocks.

After efforts to reach agreement with Japan in the INPFC forum failed, the United States initiated in 1985 bilateral discussions with Japan to reduce Japanese interception of U.S.-origin salmon. Those negotiations resulted in a proposal which was submitted, after consultation with Canada, to the INPFC and agreed to in April 1986. The agreed measures include phasing out the Japanese mothership fleet from the Bering Sea by 1994 and a slight movement westward of the land-based fleet's operations.

Although the vessels of the Japanese salmon fleets are the only driftnet vessels permitted to harvest salmon, the more than 1,400 vessel squid and billfish fleets of Japan, Taiwan, and Korea will also intercept North American-origin salmon if they operate in areas where such fish occur. In response to U.S. pressures, Japan and Taiwan have imposed area limitations on their squid and billfish fleets, limiting them to waters believed to be relatively free of North American-origin salmon. Notwithstanding those regulations, however, severe enforcement problems have occurred. The Coast Guard has sighted numerous Japanese squid vessels fishing in prohibited salmon waters outside the boundaries established by the regulations. In addition, nearly 600,000 pounds of illegally caught salmon were recently seized by National Marine Fisheries Service law enforcement personnel in Tacoma, WA, after having been allegedly caught by Taiwanese squid vessels and exported from Taiwan as part of a larger scheme involving as much as 3.5 million pounds of such illegally caught salmon.

Marine mammals

Marine mammals become entangled and die in driftnets when they swim into the invisible and nearly unbreakable plastic webbing.

The 172 vessel Japanese mothership salmon fleet has been authorized under a Marine Mammal Protection Act permit to incidentally take up to 5,500 Dall's porpoise, 450 northern fur seals, and 25 northern sea lions annually during the approximately 6-week period in which the salmon vessels fish within the U.S. EEZ. That permit expires before the beginning of the next fishing season in June 1987 and an application for a new permit is under consideration by the National Marine Fisheries Service.

U.S. observers monitor the incidental take of marine mammals during 6 percent of the driftnet sets by the mothership salmon fleet within the U.S. EEZ. There has been no monitoring by U.S. observers of the larger Japanese land-based salmon or billfish fleets and only a very small fraction of the Japanese, Taiwanese, and Korean squid fleets have been monitored. Based upon these limited observations, the National Marine Fisheries Service estimates that the combined Japanese salmon fleets incidentally take approximately 7,500 Dall's porpoise within and outside the U.S. EEZ. The Service estimates that the total fishing effort by the combined squid fleets within the range of Dall's porpoise is approximately three times that of the salmon fleets and that the resulting incidental take of Dall's porpoise could, therefore, far exceed the take by the salmon fleets and reduce one or more of the stocks below their optimum sustainable population levels.

Seabirds

Hundreds of thousands of seabirds drown in driftnets each year after their bills, feet, and wings become entangled when they swim into the nets while feeding on fish below the surface of the water.

The U.S. Fish and Wildlife Service estimates that an average of approximately 164,000 seabirds have been killed each year in the driftnets of the Japanese mothership salmon fleet during the 1981 through 1984 period. That estimate is probably low because it does not include the number of seabirds that die but drop from the net prior to its retrieval or those that die of hypothermia following release from the net.

Eighteen of the 21 species killed in the mothership salmon driftnets are covered by the Convention for the Protection of Migratory Birds And Birds In Danger Of Extinction And Their Environment between the United States and Japan. Of those 18 species, 13 are included in the Annex to the Convention listing species which may not be taken under the Convention because of the agreed biological need to protect them. The Service estimates, based upon reports by Japanese research vessels, that a similar number are killed by the larger Japanese land-based salmon fleet but, in the absence of any data, the Service is unable to provide estimates of seabird mortality in the squid driftnet fleets of Japan, Taiwan, and Korea.

A recent study by the Fish and Wildlife Service notes that the catch rate of breeding seabirds in the nets of the Japanese mothership salmon fleet is highest within 60 nautical miles of land and

that substantial numbers of seabirds nesting the western Aleutian Islands are killed in the nets each year. The study concluded that without better data, one can only speculate on the effects of the driftnet fisheries upon the populations of puffins and other species breeding in the western Aleutian Islands. Noting the inadequacies of the available data, the representative of the International Council for Bird Preservation and the Center for Environmental Education recommended in testimony that the use of driftnets be banned within 60 miles of the Islands to protect breeding seabirds.

Debris

In addition to the direct impacts of actively fished driftnets upon salmon, marine mammals, and seabirds, there are additional indirect impacts when the netting itself, no longer actively fished, is lost, abandoned, or thrown away.

It is estimated that an average of 0.06 percent of the Japanese salmon driftnet is lost and not recovered from the water during each set of the net. While seemingly negligible, this rate of loss results in a substantial amount of net floating at sea. When applied to the setting of at least 21,000 miles of net each night and more than 1,000,000 miles each fishing season, the 0.06 percent rate of loss means that at least 12 miles of net are lost in the water each night and more than 600 miles are left to float in the North Pacific Ocean each year.

Unintentional shedding is not the only source of untended driftnets. U.S. Government personnel in surveillance aircraft have observed the abandonment of entire driftnets by fleeing vessels that had been fishing illegally in restricted waters of the North Pacific Ocean. The nets, with floats and weights intact but identifying markers and radio beacons removed, are left to fish relentlessly.

The lost and abandoned plastic netting is not biodegradable; consequently, the nets "ghost fish," drift unseen and untended, until they wash ashore or sink with the weight of barnacles, seaweed, and algae. Marine mammals, seabirds, and fish become entangled and die in such "ghost fishing" nets. The propellers and shafts of fishing and other vessels become entangled as well, causing economic loss and endangering human lives. Examination of one such abandoned salmon driftnet revealed 99 dead seabirds and more than 200 salmon entangled in just a portion of the net. It is estimated that at least 50,000 northern fur seals also become entangled and die each year in lost and discarded nets and debris which include at least some driftnetting. Mortality due to entanglement is suspected as the chief cause of the continuing decline of the fur seal population which, if not reversed, will reduce the current population by one-half within the next decade.

Legislative History

On October 5, 1985, the National Ocean Policy Study held an oversight hearing on driftnet fisheries issues. Witnesses included representatives of the Department of State, National Marine Fisheries Service, U.S. Fish and Wildlife Service, North Pacific Fishery Management Council, State of Alaska, Bering Sea Fishermen's Association, Pacific Seafood Processors Association, Columbia River

Inter-Tribal Fish Commission, Japanese driftnet fisheries associations, and the International Council for Bird Preservation, Center for Environmental Education, Greenpeace, and other environmental and animal welfare organizations. Statements from representatives of the Governments of Japan and Taiwan were received for inclusion in the record of the hearing.

S. 2611 was introduced by Senator Stevens on June 26, 1986, and is cosponsored by Senators Danforth, Gorton, Kassebaum, Murkowski, and Packwood. The Commerce Committee considered S. 2611 in Executive Session and ordered it reported, without objection and without amendment, on July 23, 1986.

Summary of Major Provisions

S. 2611 would: (1) Provide for full observer coverage of Japanese mothership salmon driftnet vessels when they fish within the U.S. EEZ; (2) require the Secretary of Commerce, through the Secretary of State, to negotiate with foreign governments arrangements for monitoring the impacts of their driftnet fisheries in waters beyond the U.S. EEZ; (3) require the Secretary to submit to Congress an annual report on driftnet fisheries within and beyond the U.S. EEZ; (4) provide for the recovery of the costs of an optimally effective enforcement program by including those costs in the calculation of foreign fishing fees under the Magnuson Fishery Conservation and Management Act; (5) establish a system for the payment of bounties to encourage the retrieval of fishing net material; (6) require the Secretary to submit to Congress a report containing recommendations for establishment of a system to mark, register, and identify nets and net fragments and for use of biodegradable materials in driftnets; and (7) establish a seabird protection zone around the Aleutian Islands.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 1, 1986.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached revised cost estimate for S. 2611, the Driftnet Impact Monitoring, Assessment, and Control Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill No. S. 2611.

2. Bill title: Driftnet Impact Monitoring, Assessment, and Control Act of 1986.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, July 23, 1986.

4. Bill purpose: S. 2611 would amend the Magnuson Fishery Conservation and Management Act to require the Secretary of Commerce to monitor the impact of driftnets on fish, seabirds, and other marine life. The Secretary would be required to negotiate monitoring arrangements with foreign governments that operate or authorize fishing in U.S. waters and to deny permits to foreign vessels that do not enter into such arrangements. The bill would also require the Secretary to include in the calculation of foreign fishing fees the costs of an effective conservation enforcement program under the Magnuson Act, including the costs of enforcing exclusive management authority over anadromous species within and beyond the statutory 200-mile fishery conservation zone.

S. 2611 would also require the Secretary to promulgate regulations implementing a bounty system on retrieved driftnets, to be paid out of sums to be appropriated from the Fishery Vessel and Gear Damage Compensation Fund.

Finally, the bill would require the Department of Commerce to provide the Congress with several reports related to the implementation of various provisions.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	2.2	1.4	1.5	1.5	1.6
Estimated outlays	2.2	1.4	1.5	1.5	1.6

The costs of this bill fall within budget function 300.

Basis of estimate: The authorization levels have been estimated on the basis of information obtained from the National Marine Fisheries Service (NMFS) and the U.S. Coast Guard. Outlays have been estimated on the basis of historical spending patterns of similar programs and on information obtained from the agencies.

The table includes about $5,000 a year for the driftnet impact study required by Section 5. The estimate of study costs is based on the assumption that the NMFS is able to complete all requirements using currently available data. If, however, the agency were to subsequently determine that better data are needed, costs could be greater. For example, if a 25 percent sample of coastal driftnet fisheries is employed, the cost could be approximately $7.5 million a year.

The table includes an estimated $1 million a year in bounty payments from the Fishing Vessel and Gear Damage Compensation Fund. This amount reflects preliminary NMFS estimates of spending for the program, but actual costs may vary if final regulations differ significantly from current plans.

An estimated $300,000 a year has been included in the table for the cost that would be incurred by the Coast Guard and NMFS to enforce Section 9, related to the seabird protection zone.

The table does not include any estimate of potential additional costs that might be incurred by the Coast Guard for enforcement under Section 6, because the bill does not specifically mandate changes in Coast Guard activities. The Coast Guard spent about $130 million in fiscal year 1985 on such enforcement activities, of which about 62 percent could be attributed to foreign fishing and of which only about 27 percent was recovered through fees. If Section 6 were interpreted to mean that the total costs attributable to foreign fishing should be recovered, another $46 million would have to be charged to foreign-fishing boats. If an "optimally effective" program under Section 6 is ultimately thought to entail more effort, the costs, and consequently fees, would need to be higher.

6. Estimated Cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 11, 1986, CBO prepared an estimate for S. 2611 as ordered reported by the Senate Committee on Commerce, Science, and Transportation. This estimate has been revised to reflect more recent information from NMFS regarding the likely scope and cost of the driftnet impact study required by Section 5.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Section 4 of the bill would eliminate the exemption from full observer coverage in the Magnuson Fishery Conservation and Management Act which is now available to the 172 Japanese salmon driftnet vessels and the exemption available to foreign vessels deemed by the Secretary of Commerce to be unfit to carry an observer. The Japanese salmon vessels must currently accept U.S. observers to monitor 6 percent of their operations within the EEZ. The effect of these provisions would be to require them to accept observers for all operations within the EEZ, thereby subjecting them to the same requirements that apply to all other foreign vessels fishing within the U.S. EEZ. In addition, no vessel unfit to carry U.S. observers would be permitted to fish within that zone. Finally, the Japanese salmon vessels would be prohibited by section 9 from fishing within a zone surrounding the Aleutian Islands.

Additional reporting requirements would be imposed on foreign driftnet vessels fishing beyond the U.S. EEZ as a result of any agreements negotiated by the Secretary under section 4 with the flag state governments of such vessels. The nature and extent of such additional requirements would depend upon the agreement reached with the Secretary and would be imposed by the foreign flag state. The regulations applicable to the net bounty system to be established under section 7 of the bill will also likely require

submission of information by applicants for bounty payments, but participation in the system is voluntary and imposes no reporting requirements; any person who does not wish to collect a bounty need not submit any information.

The legislation will have no other effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individual and businesses.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

The first section states the short title of the legislation, the "Driftnet Impact Monitoring, Assessment, and Control Act of 1986".

SECTION 2.—FINDINGS

This section expresses the findings of Congress concerning the destructive nature of driftnets, the need for reliable information about their impacts, and the need for increased efforts to monitor, assess, and reduce their adverse impacts.

SECTION 3.—DEFINITIONS

The definition of "driftnet" excludes gillnets less than 1.5 miles in length which are used extensively by coastal fishermen within State waters where they can be and are effectively monitored and regulated by State authorities. The term "Secretary" means the Secretary of Commerce or the Secretary's designee.

SECTION 4.—MONITORING

Representatives of the Departments of State, Commerce, and the Interior consistently testified to the need for additional information about the nature and extent of driftnet fisheries conducted within and beyond the U.S. EEZ and about the impacts of those fisheries upon living marine resources. Despite the staggering amount of netting deployed each year, only the Japanese salmon fleets are subject to regulation by international treaty and only the 172 vessel mothership fleet, 10 percent of the total number of driftnets involved in the North Pacific Ocean, are subject to an international observer program.

Section 4(a) amends the Magnuson Fishery Conservation and Management Act to eliminate two exemptions from full observer coverage of foreign fishing vessels within the U.S. EEZ. Section 4(a)(1) removes the exemption for Japanese driftnet salmon vessels fishing in our zone. Section 4(a)(2) removes the exemption for unsafe vessels that cannot safely carry observers. Section 4(b) prohibits the issuance of any permit to a vessel that is so unsafe or otherwise inadequate as to be unfit to carry an observer, as required by the amendment made by section 4(a). The effect of these provisions is to subject the 172 vessels of the Japanese mothership driftnet fleet that fish within the U.S. EEZ to the same full observer coverage required for all other foreign fishing vessels, and to deny foreign vessels that are unfit to carry observers the opportu-

nity to benefit from their inadequacies through the exemption currently provided for such vessels.

Section 4(c) requires the Secretary to negotiate with each foreign government that conducts driftnet fisheries an arrangement for monitoring the target and non-target creatures killed and retrieved, discarded, or lost by its vessels in waters beyond U.S. jurisdiction. It prohibits the issuance of any permits to the flag-vessels of any foreign government that fails to agree to an adequate arrangement within one year, and requires a report to Congress within one year on the result of the Secretary's efforts.

The Committee intends that the Secretary attempt to negotiate arrangements under this section with the governments of Japan, Republic of Korea, and Taiwan concerning their mothership and land-based salmon, squid and billfish driftnet fisheries, as well as with any other government conducting driftnet fisheries in the waters adjacent to our coasts but beyond our EEZ. The Secretary is given discretion to negotiate arrangements and to determine whether the agreements reached are adequate. Although the Committee expects foreign governments to welcome the opportunity for cooperative monitoring and assessment, it intends that the flag vessels of foreign governments that refuse to enter into adequate arrangements be denied the opportunity to benefit from their government's refusal to cooperate.

SECTION 5.—IMPACT REPORT

The Secretary is required to submit to Congress an annual report on driftnet fisheries off our coasts and the numbers of living marine creatures they kill. The report is to include the best available information on driftnet fisheries, as defined in section 3, both within and beyond the U.S. EEZ. With respect to those fisheries beyond the zone, the Committee intends that the Secretary request information from the flag state of the vessels involved and evaluate the adequacy and reliability of that information. The Committee expects that the adequacy and reliability of the available information will improve with the conclusion and implementation of cooperative arrangements negotiated under section 4 and that the improved information will be presented in successive reports.

SECTION 6.—ENFORCEMENT AND FOREIGN FISHING PERMIT FEES

The Secretary is directed to include the costs of an optimally effective fishery enforcement program, including enforcement related to North American-origin salmon, in the calculation of the costs of the Magnuson Fishery Conservation and Management Act and to set foreign fishing fees at levels that will fully recover that cost.

SECTION 7.—NET BOUNTY SYSTEM

The Secretary is directed to establish a net bounty system for retrieval of ghost nets and other plastic fishing net material. Bounty payments are to be set by regulation and made, subject to appropriations, from the Fishing Vessel and Gear Damage Compensation Fund.

SECTION 8.—NET MARKING, REGISTRY, AND IDENTIFICATION SYSTEM

The Secretary is directed to submit to Congress, within 6 months after date of enactment of the legislation, recommendations for establishment of a system to mark, register and identify nets to allow for determination of the origin of abandoned and discarded nets and net fragments. The report is also to include recommendations on the use of biodegradable materials in driftnets to accelerate decomposition of ghost nets.

SECTION 9.—SEABIRD PROTECTION ZONE

Driftnetting, as defined in section 3, is prohibited within a zone extending 60 miles around the Aleutian Islands which serve as nesting areas for seabirds that are protected by international treaty.

The Committee believes that this provision, based upon the recommendation of experts in seabird biology and population dynamics, is not inconsistent with the International Convention for the High Seas Fisheries of the North Pacific Ocean or the North Pacific Fisheries Act implementing that Convention, and intends that it complement that Convention and other international arrangements for the protection of seabirds. The recently agreed Amended Annex to the Convention does not prohibit the United States from establishing such a zone or otherwise guarantee Japanese mothership salmon vessels the right to fish within the 60 mile zone surrounding the Aleutian Islands. Paragraph 2 of that Annex appears to contain the only reference that might be applicable to establishment of the seabird protection zone. While it calls for consultations among Japan, the United States, and Canada before modifications to gear or fishing procedures or areas of fishing which are different from those used in 1985, the consultations are to examine the need to change the number of authorized fleet days to account for any increase in fishing efficiency. The Committee has no objections to such consultations but considers them unnecessary since the establishment of the zone is not likely to result in any increase in fishing efficiency requiring adjustments under paragraph 2 of the Annex.

The Committee intends this provision to be consistent with the Migratory Bird Treaty between the United States and Japan which prohibits the taking of several species breeding on the Aleutian Islands, and with the Convention Concerning the Conservation of Migratory Birds and Their Environment which was executed by the United States and the Soviet Union on November 19, 1976. Article IV of that Convention calls upon each party to identify areas of breeding, wintering, feeding, and moulting which are of special importance to the conservation of migratory birds within the areas under its jurisdiction and to undertake measures necessary to ensure that any citizen or person subject to its jurisdiction will act in accordance with the principles of the Convention in relation to such areas. The seabird protection zone established by this section is the type of area contemplated by article IV and the prohibition upon driftnet fishing within that zone is the type of measure contemplated.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SECTION 201 OF THAT ACT

FOREIGN FISHING

SEC. 201. (a)–(h) * * * *

(i) FULL OBSERVER CONVERAGE PROGRAM.—(1) * * * *

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels, *other than vessels harvesting anadromous species under the International Convention for the High Seas Fisheries of the North Pacific Ocean, and the North Pacific Fisheries Act of 1954 (16 U.S.C. 1021 et seq.),* transfers its catch taken within the fishery conservation zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation [zone—] *zone,*

[(i)] the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be [impractical, or] *impractical; or*

[(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or]

(C) for reasons beyond the control of the Secretary, an observer is not available.

(3)–(6) * * * *

(j) * * * *

SECTION 204 OF THAT ACT

PERMITS FOR FOREIGN FISHING

SEC. 204. (a) * * * *

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—(1)–(5) * * * *

(6) APPROVAL.—(A)–(B) * * * *

(C) The Secretary shall not approve any permit for a vessel aboard which the facilities for quartering of a United States observer (pursuant to section 201(i)) or for carrying out the functions of such observer are determined by the Secretary to be so inadequate that the health, safety, or welfare of such observer cannot be assured.

(7)–(9) * * * *

(10) FEES.—(A)–(F) * * * *

(G) The Secretary shall include in the determination of the total costs of carrying out the provisions of this Act the costs of an effective enforcement program for the exercise of exclusive management authority and, in particular, to ensure the conservation and management of all anadromous species throughout their migratory range, consistent with section 102 of this Act. The Secretary shall consult at least annually with the Secretary of the department in which the Coast Guard is operating to determine the costs of an optimally effective enforcement program so that it can be reflected in and fully recovered through the schedule of fees established pursuant to subparagraph (A).

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Calendar No. 1086

99TH CONGRESS
2d Session

SENATE

REPORT
99-530

COAST GUARD AUTHORIZATION ACT OF 1986

OCTOBER 6, 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 4208]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 4208) to authorize appropriations for the Coast Guard for fiscal year 1987, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

H.R. 4208, as reported, would reauthorize appropriations for the U.S. Coast Guard for fiscal year 1987 at a level compatible with the President's request and within the overall limits set forth in the Budget Resolution. It also includes amendments relating to: a special account for use by the Commandant in meeting unanticipated demands on operations; contracting of Coast Guard activities; local hire; the Maritime Defense Zone; the Boat Safety Program; the Coast Guard Auxiliary; technical changes in titles 14 and 46 of the United States Code; reimbursements for travel expenses; Mobile Offshore Drilling Units; towing licenses; the use of forfeited vessels; limitations on training of employees of the Government of South Africa; polar icebreaking vessels; emergency position-indicating radio beacons; prosecution of maritime drug traffickers; and waivers for five vessels currently ineligible to be documented under the laws of the United States.

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Background and Needs

The Congress has delegated numerous civilian responsibilities to the Coast Guard, many of which are the product of the last 15 years. These responsibilities include: enforcement of fishery management in U.S. waters and on the high seas; maritime drug interdiction; the administration of laws relating to port and vessel safety; the control of pollution resulting from maritime oil spills; enforcement authority over ocean dumping and marine sanctuaries; and the regulation of the transportation of hazardous materials in waterborne commerce.

In addition to its civilian responsibilities, the Coast Guard also has a significant defense role. During times of national emergency, the Coast Guard will be the agency primarily responsible for the defense of the U.S. coastline. It has been currently assigned the command roles for the Atlantic and Pacific Maritime Defense Zones. Sections 6 of this legislation codifies and thereby makes permanent this responsibility.

In spite of the tremendous expansion of the Coast Guard's duties, actual funding to perform these many activities has not increased proportionately. This has caused severe problems in the field as Coast Guard district commanders are forced to juggle numerous responsibilities.

The Coast Guard was provided $1.767 billion for its operations in fiscal year 1986. This included $100 million in operating funds from the Defense Appropriations bill to defer the costs of its defense-related duties. In a hearing before the Senate Subcommittee on Merchant Marine, the Commandant of the Coast Guard testified that the fiscal year 1986 appropriation created a shortfall in operating funds of $66 million.

Part of this shortfall can be attributed to a military pay raise mandated by the Department of Defense (DOD) reauthorization for fiscal year 1986. The various branches within the DOD received an increased appropriation to cover the military pay raise. In contrast, the Coast Guard did not receive such an appropriation and was forced to fund its pay raise out of the Operating Expenses account. In addition to the $66 million shortfall, the situation was further aggravated by $76 million in further reductions resulting from the Balanced and Emergency Deficit Control Act of 1985.

This chronic shortfall in the Operating Expenses account forced the Coast Guard earlier this year to begin a slow-down of all operations which were not essential for preserving human life. This included reduced patrols, training, small scale procurement, and equipment maintenance. The Coast Guard also indicated that, if supplemental appropriations would not be forthcoming, the agency would be forced to reduce its level of personnel, close stations, and discontinue operation of equipment.

The Congress did subsequently provide $35.5 million in a supplemental appropriation to bolster the Coast Guard's operations. The Secretary of Transportation also transferred, pursuant to a grant of such authority by Congress, $10.4 million from the Acquisition, Construction and Improvements (AC&I) account to the Operating Expenses account. This transfusion was sufficient to avoid the

more draconian measures being considered by the agency in an effort to cope with its funding shortfalls.

The Coast Guard did not experience the same shortfalls in funding for the AC&I account in fiscal year 1986. The sum of $375 million was appropriated to the Coastal Defense Augmentation Fund within the Department of the Navy for use in the acquisition of equipment for the Coast Guard in 1986. Though the administration briefly considered the possibility of deferring $190 million appropriated from the Coastal Defense Augmentation Fund for use by the Coast Guard in fiscal year 1987, this deferral did not take place and all but $70 million was obligated to acquire vessels, aircraft, and equipment.

The Senate has recently approved an amendment to the DOD reauthorization for fiscal year 1987 which authorizes $200 million for the acquisition and maintenance of defense-related equipment for use by the Coast Guard in fiscal year 1987. The amendment also authorized $100 million in operating funds for the Coast Guard's Defense Readiness Program.

The Committee supports the sharing of costs with the DOD with respect to the defense-related responsibilities of the Coast Guard. The Federal deficit will continue to put pressure on the Coast Guard's budget. It is important to assure that the Coast Guard is not put in the position of having to continue its defense-related activities at the cost of its civilian responsibilities.

H.R. 4208, as amended, authorizes $2,513,000,000 for the Coast Guard in fiscal year 1987. Although technically in excess of the President's budget request, the figure reflects a subsequent determination on the part of the administration of the need to increase funding for AC&I by $190 million when it became apparent that funds appropriated to the DOD for use by the Coast Guard would not be made available for fiscal year 1987.

Taken alone, the bill constitutes a $117 million reduction of authorization levels from the fiscal year 1986 appropriations level after reductions under the Balanced Budget and Emergency Deficit Control Act of 1985. However, the $300 million in additional authorizations for the operations and AC&I accounts of the Coast Guard, provided in the DOD reauthorization bill, would result in a net increase over the actual fiscal year 1986 appropriations level.

In additional to the increased authorization level for the Operating Expenses account, H.R. 4208 as amended by the Committee would provide the Commandant with a discretionary account for use in reacting to unanticipated demands on Coast Guard operations. This account is to be funded either through direct appropriations or through a transfer of funds from AC&I.

The amended version of H.R. 4208 represents a shift toward greater stability in the Coast Guard's funding for operations. The AC&I account is important to improve and maintain the Coast Guard's capital base. However, capital assets do little good when the agency does not have funding to utilize these assets in the performance of the various Coast Guard missions.

Legislative History

H.R. 4208 passed the House of Representatives on May 6, 1986 and was referred to the Committee on May 7, 1986.

The Committee ordered reported an amendment in the nature of a substitute for H.R. 4208 without objection on September 24, 1986.

On May 13, 1986, the Subcommittee on Merchant Marine held a hearing on the reauthorization of the Coast Guard and related issues. The Commandant of the Coast Guard was the only witness to present oral testimony due to an unanticipated interruption. The other witnesses were requested to submit written testimony for the record. These witnesses included representatives of the recreational boating community, the Coast Guard Auxiliary, the Commercial towing industry, and the American Bureau of Shipping.

Summary of Major Provisions

The Committee amendment would: (1) authorize appropriations for the Coast Guard; (2) create a discretinary account for the Commandant to react to unanticipated demands on Coast Guard operations; (3) provide the Secretary of Transporation with limited authority to transfer up to 5 percent of the AC&I account to the Operating Expenss account: (4) impose certain limitations on the contracting out of Coast Guard activities to the private sector; (5) require the Coast Guard to include a local hire provision in construction or service contracts in limited circumstances; (6) codify the Coast Guard's command responsibilities over the Maritime Defense Zone; (7) amend the Boat Safety Account; (8) provide the Secretary of Transportation with the discretionary authority to pay interest on damage claims submitted by the Coast Guard Auxiliary; (9) require the Secretary of Transportation to prepare and submit a report on the viability of the Coast Guard Auxiliary: (10) provide sanctions for the violation of orders governing the movement and anchorage of vessels; (11) grant the Secretary of Transporation the legal authority to receive reimbursementts for expenses incurred by Coast Guard employees; (12) make changes to the laws governing wages of fishermen employed on oyster vessels; (13) amend the manning requirements with respect to Mobile Offshore Drilling Units; (14) require all vessels engaged in commercial towing operations to be licensed; (15) permit the Federal Government to donate to educational institutions vessels forfeited to the United States; (16) prohibit the Coast Guard from providing training services to South Africa; (17) amend the law relating to the prosecution of maritime drug traffickers; and (18) grant legislative waivers from restrictions on vessel documentation for five vessels.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1986.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4208, the Coast Guard Authorization Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4208.
2. Bill title: Coast Guard Authorization Act of 1986.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, September 24, 1986.
4. Bill purpose: H.R. 4208 would authorize the appropriation of $1,863 million for U.S. Coast Guard (USCG) operating expenses in 1987, as well as necessary funds for increases in salaries and benefits. The bill would also authorize 1987 appropriations of $267 million for acquisition, construction, and improvement activities, $20 million for research, development, test and evaluation activities, and $364 million for retirement pay to eligible personnel.

Section 7 of the bill would provide for changes in the allocation of motor fuels tax revenues among the various federal programs that they fund. Specifically, Section 7 would require the Secretary of the Treasury to use a new methodology to determine the amount of motorboat fuels tax revenues transferred from the Highway Trust Fund to the Aquatic Resources Trust Fund (ARTF). The amount of such sums that would be deposited to the Boat Safety account in the ARTF would be raised from $45 million to $60 million a year.

Finally, the bill contains a number of other provisions pertaining to contracting practices, Maritime Defense Zone responsibilities, Coast Guard Auxiliary policy, and the disposal of vessels forfeited to the United States.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Section 2—Coast Guard authorizations:					
Estimated authorization level:					
Function 400	2,150	.....	.....	.....	.....
Function 920	24	.....	.....	.....	.....
Total	2,174	.....	.....	.....	.....
Estimated outlays:					
Function 400	1,644	314	133	38	21

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Function 920	23	1			
Total	1,667	315	133	38	21

The authorization for Coast Guard retirement pay has not been included in the above table because such pay is an entitlement under current law.

Section 7—Boat Safety Amendments

Section 7 would increase the amounts transferred from the Highway Trust Fund to the ARTF, thereby increasing each year's direct spending authority by the amount of transfer. While amounts thus transferred to the Sport Fish Restoration account in the ARTF become immediately available for spending, the portion transferred to the Boat Safety account can only be spent subject to annual appropriations to liquidate contract authority. Assuming that funds are appropriated each year to liquidate all of the additional contract authority accruing to the Boat Safety account, the budget impact would be as follows:

	1987	1988	1989	1990	1991
Direct spending effect:					
Estimated budget authority [1]	30	35	39	43	48
Estimated outlays [2]	8	14	21	25	30
Requiring appropriation action: Estimated outlays [2]	11	15	15	15	15

[1] The budget authority represents the total additional amounts that would be transferred to the Sport Fish and Boat Safety accounts.
[2] Direct spending amounts represent only the additional outlays from the Sport Fish account that would result from the increase in budget authority; outlays from the Boat Safety account would be subject to liquidating appropriations and are shown separately.

The costs of this bill fall within budget functions 400 and 920.

Basis of Estimate

For the purposes of this estimate, it is assumed that the full amounts authorized for USCG programs will be appropriated for fiscal year 1987. The function 400 authorization levels are those specified in the bill. The authorization for pay increases (function 920) has been estimated on the basis of the assumptions underlying the 1987 budget resolution.

Beginning in fiscal year 1987, Section 7 of the bill would require the Secretary of the Treasury to use the methodology described in its June 1986 report to the Congress entitled "Gasoline Excise Tax Revenues Attributable to Fuel Used in Recreational Motorboats" to transfer motorboat fuels tax revenues to the Aquatic Resources Trust Fund. Based on our review of this report and on information obtained from the Department of the Treasury, CBO would expect the new methodology to result in an increase in the amounts transferred to the ARTF of about $30 million in fiscal year 1987. Because the new methodology would be able to account for the growth in the number of motorboats over time (the present allocation is based on a fixed percentage formula), its use will result in a progressively larger increase in new budget authority each year.

For example, projections using the new methodology, when coupled with estimates of net growth in the number of vessels, yield an increase in the transfer from the Highway Trust Fund of about $35 million in 1988, growing to about $48 million by 1991.

Section 7 would also increase the annual cap on transfers to the Boat Safety account in the ARTF by $15 million to $60 million, in effect allocating one-half of the 1987 increase to Boat Safety programs and one-half to the Sport Fish Restoration account administered by the U.S. Fish and Wildlife Service. By 1991, however, the proportion of the increase devoted to Sport Fish Restoration would rise to nearly 70 percent. The change in the relative percentage occurs because of the fixed dollar-amount cap on Boat Safety appropriations, which results in increasing amounts flowing to the Sport Fish account as motorboat fuels tax revenues increase. The bill would also change the portion of deposits to the Boat Safety account that is available for USCG operating expenses from one-third to one-half.

Two other sections of the bill could result in increased costs to the federal government, but their eventual impact on spending is so uncertain that they have not been included in the table. Specifically, Section 5 would establish certain procedures that the U.S. Coast Guard would have to follow before it awards any contract under OMB's Circular A-76 program for commercial activities. While the bill would not prohibit contracting out commercial activities, the new procedures it would require may delay or discourage some contracting. In such cases, some planned budgetary savings could be lost. For example, the USCG 1987 budget request reflected an estimated annual savings of $1.4 million to be realized from personnel reductions taken in 1986 pursuant to Circular A-76 reviews made in earlier years. During 1987, the agency expects to review about 37 activities (involving about 1,700 positions) that could be affected by the bill's restrictions.

Section 13 would permit the donation of forfeited vessels to certain educational institutions that meet specified criteria. Under current law, vessels forfeited to U.S. agencies, such as the Drug Enforcement Administration or the U.S. Customs Service, are sold by the federal government. Proceeds from sales are deposited to various funds and are used to offset agency expenses, including the costs of maintaining forfeited assets. While the initial demand for such donations (which would be made at the discretion of the possessing agency) is expected to be minimal, over time enactment of this provision could lead to a measurable loss in federal collections as well as increased administrative costs. For example, the U.S. Customs Service projects future gross collections from the sale of forfeited boats of between $3 million and $6 million per year, or between $20,000 and $40,000 per vessel. About one-half of this amount will be realized as net income; the other half will offset maintenance and sales costs. If some of these boats are instead donated to qualified schools, some portion of the expected gross collections will not be realized (although most of the accompanying costs will probably still be incurred). The amount of losses would depend on the number and value of vessels donated by the government, which cannot be projected.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 11, 1986, CBO prepared a cost estimate for H.R. 4808 as ordered reported by the House Committee on Merchant Marine and Fisheries, April 9, 1986. Differences in authorization levels and in other provisions addressing contracting and Boat Safety programs are reflected in the estimates.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The amendment will have no additional regulatory impact, but section 5 does impose additional reporting requirements on the Secretary of Transportation with respect to the contracting out of Coast Guard activities to the private sector.

Section 12 will result in a slight increase in the number and types of individuals and busineses regulated by requiring the operators of commercial towing vessels under 26 feet to be licensed by the Coast Guard. The legislation will have no further effect on the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

The first section states the short title of the legislation, the "Coast Guard Authorization Act of 1986".

SECTION 2—AUTHORIZATION LEVELS

(1) Operating Expenses

A total of $1,862,800,000 is authorized for expenses incurred by the Coast Guard in performing a variety of Congressionally-mandated civilian and defense-related functions. These responsibilities include administration of the Maritime Defense Zone, fishery enforcement in the U.S. Exclusive Economic Zone, and on the high seas, drug interdiction, search and rescue, the maintenance of aids-to-navigation, protection of the marine environment, and the regulation of safety of vessels, ports, and waterways.

The authorization level reflects the President's request for operating expenses in fiscal year 1987. It is $171,800,000 more than actual appropriations for fiscal year 1986 after the reductions under the Balanced Budget and Emergency Deficit Control Act of 1985.

This paragraph also creates a new account to be used by the Commandant of the Coast Guard to meet demands on its operations arising from emergency situations which were unanticipated by the President's budget request.

It has come to the attention of the Committee that the Coast Guard has issued an advanced notice of proposed rulemaking on the delegation of plan review and inspection of U.S.-flag vessels. The proposed rulemaking would, if implemented, permit the Coast Guard to contract with subsidiaries of foreign classification societies to perform such work.

Title 46, United States Code, grants the Coast Guard authority to delegate plan review and inspection to the American Bureau of Shipping (ABS) or "a similar U.S. classification society" (46 U.S.C. 3316). The Coast Guard has acknowledged that its arrangement with ABS has worked well. The Committee therefore fails to see any compelling reason for bifurcating the Coast Guard's present policy by expanding the scope of "a similar U.S. classification society" to include subsidiaries of foreign classification societies.

(2) Acquisition, Construction, and Improvements

A total of $267 million is authorized for the acquisition, construction, and improvement of capital assets used in the operation of Coast Guard activities. These assets include new construction and improvement of vessels, aircraft, equipment, aids-to-navigation, and shore facilities.

This authorization level for AC&I reflects the President's request in fiscal year 1987. It is $413 million less than the 1986 authorization, and is $297 million less than was actually appropriated in fiscal year 1986. Actual appropriations for AC&I after reductions under the Balanced Budget and Emergency Deficit Control Act of 1985 totaled $564 million.

(3) Research and Development

A total of $20 million is authorized to fund the Coast Guard's research and development program. The program is designed to maintain the technological base essential for the Coast Guard's operational capabilities. Among other activities, the Coast Guard program assists in improving maritime safety equipment and vessel safety, long-range surveillance and communications systems, search and rescue capability, aids-to-navigation, pollution control technology, and the agency's data base.

This authorization is $500,000 less than the President's request, and represents level funding from actual appropriations in fiscal year 1986 after reductions under the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) Retirement Pay and Medical Care

A total of $364 million is authorized to pay obligations to retired Coast Guard personnel and their dependents, including payments to the Retired Serviceman's Family Protection Plan, Survivor Benefit Plan, and for the cost of medical care.

This authorization is $10 million greater than the President's budget request, which was subsequently determined to be incorrect by the administration. The level authorized in this Act reflects the actual obligations which will be incurred in fiscal year 1987.

(5) Transfer Authority

This paragraph grants legal authority to any Federal official to transfer to the Coast Guard any appropriations received to carry out Coast Guard activities described in paragraphs (1) through (4) of this section.

SECTION 3—MILITARY STRENGTH AND TRAINING

(a) Military Strength

This subsection authorizes the Coast Guard to maintain active duty personnel levels at 39,200, which is 548 more than the President's request. The increase is necessary to provide the Coast Guard with the flexibility to continue the placement of law enforcement boarding teams on vessels of the U.S. Navy.

(b) Military Training

This subsection authorizes a total of 4,676 student-years for the training of military personnel. This includes recruit, flight, professional, and officer training.

SECTION 4—TRANSFER OF FUNDS

This section authorizes the Secretary of Transportation to transfer up to 5 percent of the funds appropriated for AC&I to the Operating Expenses account for use by the Commandant of the Coast Guard to meet unanticipated demands on the agency's operations. The section requires the Secretary to notify the Senate Committee on Commerce, Science, and Transportation, the House Committee on Merchant Marine and Fisheries, and both the Senate and House Committees on Appropriations prior to the transfer. This notification must describe the reasons for and the proposed use of the transferred funds. The section prohibits the Secretary from transferring funds until 15 days after written notice has been provided.

SECTION 5—LIMITATIONS ON CONTRACTING

(a) Core Logistics List

This subsection requires the Secretary of Transportation to develop a list of Coast Guard activities deemed essential to maintain a logistics capability that ensures the effective performance of the various Coast Guard missions, which shall be submitted to the Senate Committee on Commerce, Science and Transportation and the House Committee on Merchant Marine and Fisheries.

(b) Prohibition on Contracting

This subsection prohibits the contracting for performance to nongovernment personnel of any activity which is identified on the list required by subsection (a) unless the Secretary waives the prohibition based on a determination that such activity is no longer necessary for the effective performance of the various Coast Guard missions. The Secretary may not waive the prohibiton unless: (1) the Secretary has notified the House Committee on Commerce, Science, and Transportation of the determination; and (2) subsequent to

such notification, 30 days has expired when either the House or Senate is in session.

(c) List of Contract Reviews

This subsection requires the Secretary to submit a list to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Merchant Marine and Fisheries of all Coast Guard activities which will be reviewed for potential contracting to non-governmental personnel in accordance with Office of Management and Budget Circular A-76.

(d) Awarding of Contracts

This subsection requires the Secretary of Transportation to report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Merchant Marine and Fisheries 30 days prior to the actual awarding, under OMB Circular A-76, of a contract for the performance of a Coast Guard activity by non-governmental personnel. The report shall describe the proposed contract, and shall include comparisons on costs and the performance of services, and an explanation of the benefits to the Coast Guard of proceeding with the proposed contract.

(e) Local Hire

This subsection requires that the Coast Guard include a provision in each contract for construction or services requiring hiring of local residents when the unemployment average in the State where the contract is to be performed exceeds the national unemployment average. For purposes of this subsection, the term "local resident" includes individuals which are within daily commuting distance of such State.

SECTION 6—MARITIME DEFENSE ZONE

This section codifies the memorandum of understanding signed by the Navy in March 1984 which assigned the performance of the Maritime Defense Zone command responsibilities to the Coast Guard.

SECTION 7—BOAT SAFETY PROGRAM

(a) Limitations on Transfer

This subsection raises the limitations on transfer to the Boat Safety Account within the Aquatic Resources Trust Fund from $45 million to $60 million.

This subsection also requires that the amounts paid into the Boat Safety Account be determined in accordance with a June 1986 report by the Treasury Department entitled "Gasoline Excise Tax Revenues Attributable to Fuel Used in Recreational Motorboats". This report has concluded that the current estimates of excise tax revenues attributable to recreational boating are approximately $30 million more than the amount that has been paid into the Account.

(b) Allocation of Boat Safety Account Monies

This subsection raises the percentage of funds allocated to the Coast Guard from the Boat Safety Account from one-third to one-half, and reduces the percentage of funds going to the States for boating safety programs by a corresponding amount. However, the increase in revenues as a result of subsection (b) will assure that the funds available for appropriation to the States for boat safety will not be reduced.

(c) Administrative Expenses

This subsection makes available to the Coast Guard between 1 percent and 2 percent of the funds which would be allocated to the States from the Boat Safety Account to pay the costs incurred by the Federal Government in administering the Boat Safety Account.

SECTION 8—PAYMENT OF INTEREST TO THE COAST GUARD AUXILIARY

This section permits the Secretary of Transportation to pay interest on claims submitted by a member of the Coast Guard Auxiliary, whenever payment of a valid claim has not been made within 60 days of its filing.

The Committee does not intend that the Secretary be required to pay interest on valid claims. This section is designed solely to give the Secretary the requisite legal authority to do so if appropriate. The Committee believes that all relevant information necessary for an effective evaluation should be provided by the Auxiliary member before the 60-day period begins to run.

SECTION 9—REPORT ON THE COAST GUARD AUXILIARY

This section requires the Secretary of Transportation to prepare and submit a report to Congress on the status of the Coast Guard Auxiliary and the impact, if any, on the maritime community of any decline in its performance in key areas of responsibility. The report shall contain an evaluation of the effect of the Coast Guard non-emergency assistance policy on effectiveness of the Auxiliary.

The Committee was presented with testimony from representatives of both the Coast Guard Auxiliary and the commercial towing sector regarding the Coast Guard's policy on non-emergency assistance. The Auxiliary maintains that the current policy of directing non-emergency assistance to private towing firms has served to undermine the membership of the Auxiliary. On the other hand, the commercial towing sector depends on this policy for much of its business and is concerned about the economic impact of any statutory attempt to modify the policy.

The Coast Guard remains opposed to any provision which reduces the flexibility of filed commanders to assign non-emergency assistance to the commercial towers. The Committee believes the agency is in the best position to conduct a preliminary analysis on the effect of the non-emergency assistance policy on the Auxiliary's membership, and to determine whether it is in the interest of the maritime community to reform the policy in a manner which puts a greater emphasis on the utilization of the Auxiliary.

SECTION 10—MISCELLANEOUS AMENDMENTS

(a) Title 14

This subsection makes a number of technical corrections to title 14, United States Code. Paragraphs 1 through 3 correct certain errors in citations and the analysis of parts for title 14. Paragraph 4 removes references to the authority of the Governor of Panama to regulate the movement and anchorage of vesels in the Panama Canal, which has been expressly superseded by the Panama Canal Act of 1979 (Public Law 96-70).

New section 91(c) is a substantive change to title 14. It provides express sanctions against individuals who violate the orders of the Secretary of Transportation with respect to the anchorage and movement of any vessel in the territorial waters of the United States.

Paragraph 5 changes the reference in section 146 of title 14 from "Postmaster General" to the "U.S. Postal Service". Paragraph 6 strikes sections of title 14 relating to the retirement of civil service personnel formerly employed with the now defunct Life Saving Service, the Lighthouse Service, the Bureau of Marine Inspection and Navigation, and the Bureau of Customs. The paragraph protects the status of the rights and obligations which have already been incurred by retirees prior to this repeal.

Paragraph 7 deletes the reference to the Lighthouse Service Retirement Act, and replaces it with the formal title of the original legislation relating to retirement of the civilian keepers of lighthouses. Paragraph 8 amends the word "Section" to read "section".

Paragraph 9 strikes a freestanding authorization from the Statutes At Large (77 Stat. 68) that has subsequently been codified in the United States Code (14 U.S.C. 662(2)).

(b) Title 46

Paragraph 1 clarifies that fishing vessels which incidentally freeze fish during the course of a fishing operation are not to be considered "fish processing vessels" for purposes of title 46.

Paragraph 2 is a substantive change in title 46. It grants the Secretary of Transportation the legal authority to receive reimbursements for the travel and subsistence expenses incurred by Coast Guard personnel. This authority is limited to instances when applicants desire a certificate or license issued by the Coast Guard and no travel funds are available to perform the requisite tests.

Paragraph 3 amends the definition of "master" and "seaman" to avoid ambiguities created throughout Part G dealing with Merchant Seamen Protection and Relief.

Paragraph 4 and 5 make substantive changes to the laws governing the wages of fishermen employed on oyster vessels. Part G of title 46 dealing with Merchant Seamen Protection and Relief does not apply to fishermen except those employed on oyster vessels. These amendments put oystermen in the same position as all other fishermen.

SECTION 11—MOBILE OFFSHORE DRILLING UNITS

This section clarifies that the Secretary of Transportation shall take into account the specialized nature of a Mobile Offshore Drilling Unit (MODU) in determining the manning requirements when it is engaged in drilling activities. It distinguishes a MODU from other vessels for purpose of the regulatory requirements of title 46, but maintains the discretion of the Secretary in determining manning requirements when the MODU is navigating and when it is stationary.

The primary reason for the amendment to section 8301 of Title 46, United States Code, is to exempt MODUs on location from the statutory minimum manning scales. This amendment is in no way intended to reduce safety, reduce operational flexibility required by evacuation plans, or exempt MODUs from appropriate manning levels established by the Coast Guard under section 8101(a) of Title 46, United States Code. In fact, section 8101(a) as amended by this bill will give the Coast Guard the authority to determine the safe manning levels that equal or exceed the minimum in section 8301 if safety needs so dictate. The minimum number of licensed individuals required by section 8301 will continue to apply to MODUs that are not on location. When not on location a MODU more resembles a regular vessel underway and the minimum requirements for licensed personnel established in section 8301 will apply, in addition to requirements established by the Coast Guard under section 8101.

This section also exempts personnel who are solely engaged in the industrial functions of the MODU from the requirement that they carry merchant mariners' documents.

SECTION 12—TOWING LICENSE

This section requires that the operators of all vessels who engage in commercial towing activities must be licensed for such activity by the Secretary of Transportation. Current law exempts operators of vessels under 26 feet from the licensing requirement. Operators who tow vessels on a voluntary basis are exempt from the licensing requirement under this provision.

SECTION 13—FORFEITED VESSELS

This section permits the Federal Government to donate to educational institutions vessels forfeited to the United States. Such donated vessels would be used in commercial fishing programs and vessel safety, education and training programs.

In order to qualify, an educational institution must offer courses in vessel stability, firefighting, first aid, marine safety and survival, seamanship, and the rules of the road. The section requires the institution to: (1) take the vessel free from warranty; (2) maintain the vessel; (3) use the vessel only for training purposes; and (4) have the vessel documented under the laws of the United States, if eligible for documentation.

Donated vessels may be disposed of by the institution only after approval by the General Services Administration, and all proceeds must be turned over to the Federal Government. The section also

contains an express disclaimer of liability from any legal action arising from the transfer or use of such vessel.

SECTION 14—LIMITATION ON TRAINING

This section prohibits the Coast Guard from providing training services to employees of the Republic of South Africa for fiscal year 1987.

SECTION 15—POLAR ICEBREAKING VESSELS

This section requires the Secretary of Transportation to report annually to Congress on the status of design and construction plans for the procurement of at least two new polar icebreaking vessels.

SECTION 16—VESSEL SAFETY

During the hearing on Coast Guard reauthorization, the Subcommittee on Merchant Marine also heard testimony on S. 1764, a bill relating to emergency position-indicating radio beacons (EPIRB). This section requires fishing, fish processing, and fish tendering vessels to be equipped with EPIRBs.

The EPIRB issue has been an intergral part of a comprehensive effort to increase vessel safety and reform the liability laws with respect to the fishing industry. The Committee recognizes the relationship between the safety issue and the liability issue, and intends to address a broader package in the 100th Congress.

SECTION 17—PROSECUTION OF MARITIME DRUG TRAFFICKERS

Section 17 would revise the Coast Guard's principal maritime drug enforcement law (Public Law 96-350), which was enacted in 1980. That law has significantly improved the U.S. ability to prosecute drug smugglers, particularly foreign offenders, who before its enactment were virtually all deported or repatriated to their countries of origin without punishment. Section 17 is needed because defendants in cases involving foreign or stateless vessel boardings and seizures have been relying heavily on international jurisdictional questions as legal technicalities to escape conviction.

In accordance with international law applicable to enforcement at sea, the Coast Guard does not board a vessel claiming foreign registry until the foreign nation involved has indicated its consent or has denied the vessel's claim of registry. Under Public Law 96-350 defendants have been insisting at trial that the government present judicially admissible documentary evidence from the affected foreign nation to prove consent or denial of a claim of registry. These tactics have met with varying success, depending on the court. But prosecutors have had to go to great lengths to protect their cases from the possibility of an adverse ruling. Obtaining documents from foreign governments that are sufficient to withstand evidentiary objections in a U.S. courtroom can take months. This is especially the case because the foreign governments, unfamiliar with U.S. legal procedures, have to generate the required documents.

On occasion, delays in acquiring the necessary documents have jeopardized cases because of the U.S. constitutional requirement to

afford defendants with a speedy trial. It is estimated that acquiring such documentation consumes from 2.5 to 8 days of U.S. Government personnel time for each case.

In the view of the Committee, only the flag nation of a vessel should have a right to question whether the Coast Guard has boarded that vessel with the required consent. The international law of jurisdiction is an issue between sovereign nations. Drug smuggling is universally recognized criminal behavior, and defendants should not be allowed to inject these collateral issues into their trials.

Section 17 would eliminate this problem. First, it declares that trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States. Second, it takes the four offenses stated in the present law and consolidates them into one single offense. Third, it spells out in greater detail the kinds of situations subject to U.S. enforcement jurisdiction. Finally, it makes clear that only a foreign nation may invoke a claim of failure to comply with international law in the enforcement of the act.

Under this section it is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute a "controlled substance" (as defined under the Comprehensive Drug Abuse Prevention and Control Act of 1970).

Section 17 defines "vessel subject to the jurisdiction of the United States" to include a vessel without nationality; a vessel assimilated to a vessel without nationality in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas; a vessel registered in a foreign nation where the flag nation has consented or waived objections to enforcement by the United States; and a vessel located in the territorial waters of another nation, where the nation consents to enforcement by the United States.

In instances where the United States is required to prove a foreign nation's consent or waiver of objection to U.S. enforcement, or such a nation's denial of a claim of registry, this section permits proof by certification of the Secretary of State or the Secretary's designee. Such a certification should spell out the circumstances in which the consent, waiver, or denial was obtained, including the name and title of the foreign official acting on behalf of his government, the precise time of the communication, and the means by which the communication was conveyed. The Committee does not intend for the Coast Guard or other Federal agencies to alter their current practices with respect to boarding or seizing vessels at sea as a result of this legislation.

SECTION 18—AUTHORITY TO ISSUE CERTAIN CERTIFICATES

This section grants legislative waivers from restrictions on vessel documentation under the laws of the United States for five vessels:

(1) Dunes Spirit

The Committee has approved a Jones Act waiver for the *Dunes Spirit* (U.S. official number 690176) because of the need to correct a

questionable action by the Coast Guard regarding this particular vessel. This 45-foot sailboat, which is 49 gross tons and was built overseas, was purchased new from a New Jersey boat dealer in 1985. It is capable of carrying up to 24 passengers with a two-person crew. The buyer, a real estate company from Hilton Head Island, SC, purchased this vessel for the exclusive recreational use of time-share owners of a condominium project at Shelter Cove Harbour on Hilton Head. From August to November 1985 the time-share owners of the condominium development chartered the vessel on a bareboat basis for four days each week. Under terms of the August 1985 agreement, it is clear that the charterers had the full responsibility to arrange for a competent captain and crew.

In late November 1985, the Coast Guard cited the vessel for failing to comply with the terms of title 46, United States Code, dealing with small passenger vessel safety. The Coast Guard's position was partly predicated on its judgment that the Jones Act applied to this particular vessel when carrying the time-share condominium owners. The Committee believes this judgment was erroneous.

As the Customs Service has indicated in correspondence with this Committee, "the use of a vessel by a person and his guests under conditions amounting to a bareboat charter would not be considered a carriage of passengers for hire and their use of a vessel in activities which ordinarily would be considered coastwise trade would not be in violation of law." The Committee believes the *Dunes Spirit* was being operated in accordance with such a bareboat charter. However, because the Coast Guard appears to be committed to its initial decision, the Jones Act waiver is being granted so the *Dunes Spirit* may be operated as originally intended, for the exclusive use of Hilton Head condominium owners. In light of this case, the Committee intends to look into the Coast Guard's practices with regard to bareboat charters of recreational vessels to determine if broader statutory direction is required to clarify U.S. policy in this area.

(2) Kodiak Queen

The *Kodiak Queen* (U.S. Official Number 507891), a vessel of 478 gross tons and about 144 feet in length, was built in Mare Island, CA, in 1941 for the Department of the Navy. It was placed under Liberian registry in 1962 as the M.S. *Vardzhov* when purchased by Somhov Tankers, Inc. of Monrovia, Liberia. In 1967, the vessel was acquired by Arntsen and Brechen, Inc. of Kodiak, AK, and placed under U.S. flag and registry as the *Kodiak Queen*. The vessel has been owned since that time by U.S. citizens.

The *Kodiak Queen* is documented for the fisheries, and has been operating in the tanner crab fishery in and around Kodiak during 1986. Its present owners wish to use the vessel in coastwise trade, to tender salmon, herring, crab or freight for Ocean Beauty Seafoods and other seafood processing companies. However, the *Kodiak Queen* is restricted from engaging in the coastwise trade of the United States because of alien ownership in its chain of title.

(3) La Reina

The *La Reina* (U.S. Official Number 230115), formerly known as *Noah's Ark*, is a 56-foot Tilghman River Yacht that was built in

Florida in 1930. It has been used as a pleasure boat and has never left the waters of Florida.

The present owner is doing business as a golf and tennis resort in Florida. The owner wishes to use the vessel to carry guests of the resort on a cruise of Lake Harris for dining, entertainment, and sightseeing as part of their visit to the resort. The vessel cannot be documented for such coastwise trade because the most recent previous owner was a resident alien (Canadian citizen) who used the vessel as a pleasure boat in Florida. That alien ownership in the chain of title precludes documentation even though the vessel was built in and has never left the United States.

(4) Northwind

The *Northwind* (U.S. Official Number 230147), a motor yacht of 221 gross tons and 122 feet in length, was built in Manitowoc, Wisconsin, in 1930. In 1938, the vessel was transferred from United States to British ownership, to be used in the service of the British government and Royal Navy. After the war, the *Northwind* was sent on a diplomatic world cruise in support of the British export trade, as well as in the service of the Prime Minister. In 1975, the vessel was purchased by Argyco Compania, based in the Mediterranean, and was placed under Panamanian registry. The vessel is now located in Seattle, WA.

The vessel had suffered substantial deterioration over the years. The *Northwind* required extensive renovation to restore its historic grandeur. In addition, modern navigation and other electrical innovations were installed. The overhaul and modernization, which took place in Seattle, cost the present owner approximately $400,000, an amount in excess of the 1975 purchase price.

The present owners wish to engage the *Northwind* in the coastwise trade of the United States as a pleasure charter for groups of up to 12, with a crew of 5 or 6, in and around Seattle, WA. However, the vessel is restricted from such trade because of alien ownership in its chain of title.

(5) Wanderbird

The *Wanderbird* (U.S. Official Number 229607), an oak-planked, copper-sheathed schooner of 52 gross tons and about 80 feet in length, was built in Germany in 1883. The vessel was originally commissoned by the German Government to guide vessels through the North Sea. In 1926, the *Wanderbird* was purchased by Warwick Tompkins. The vessel was refitted, and in 1929, set a transatlantic crossing record of 16 days. In 1936, the *Wanderbird* was sailed to San Francisco. In 1969, the current owner purchased the *Wanderbird* and began a full-scale restoration effort in the United States.

The *Wanderbird* is presently documented for use as a pleasure vessel, capable of accommodating eight passengers. The owner wishes to use the vessel to carry passengers for hire on pleasure sail cruises in San Francisco Bay and along the California coast. The *Wanderbird* is currently restricted from engaging in the coastwise and fisheries trades of the United States because it is a foreign-built vessel.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of H.R. 4208:

On motion to report H.R. 4208 with an amendment in the nature of a substitute.

YEAS—13	NAYS—0
Mr. Danforth	
Mr. Packwood	
Mr. Goldwater [1]	
Mr. Kassebaum	
Mr. Pressler [1]	
Mr. Gorton	
Mr. Stevens	
Mr. Kasten	
Mr. Trible	
Mr. Hollings	
Mr. Riegle	
Mr. Exon [1]	
Mr. Gore	

[1] By proxy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 14, UNITED STATES CODE

Part		Beginning Section
I.	Regular Coast Guard	1
[II.	Coast Guard Reserve and Auxiliary	751]
II.	*Coast Guard Reserve and Auxiliary*	*701*

Section 2 of that title

§ 2. Primary duties

The Coast Guard shall enforce or assist in the enforcement of all applicable Federal laws on and under the high seas and waters subject to the jurisdiction of the United States; shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive department; shall develop, establish, maintain, and operate, with due regard to the requirements of national defense, aids to maritime navigation, icebreaking facilities, and rescue facilities for the promotion of safety on, under, and over the high seas and waters subject to the jurisdiction of the United States; shall, pursuant to international agreements, develop, establish, maintain, and operate

icebreaking facilities on, under, and over waters other than the high seas and waters subject to the jurisdiction of the United States; shall engage in oceanographic research on the high seas and in waters subject to the jurisdiction of the United States; and shall maintain a state of readiness to function as a specialized service in the Navy in time of war, *including the fulfillment of Maritime Defense Zone command responsibilities*

PART II. COAST GUARD RESERVE AND AUXILIARY

Chapter	Beginning Section
[21. Coast Guard Reserve	751]
21. Coast Guard Reserve	*701*
23. Coast Guard Auxiliary	821
25. General Provisions for Coast Guard Reserve and Auxiliary	891

Section 82 of that title

§ 82. Cooperation with Administrator of the Federal Aviation Administration

The Coast Guard, in establishing, maintaining, or operating any aids to air navigation herein provided, shall solicit the cooperation of the Administrator of the Federal Aviation Administration to the end that the personnel and facilities of the Federal Aviation Administration will be utilized to the fullest possible advantage. Before locating and operating any such aid on military or naval bases or regions, the consent of the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, as the case may be, shall first be obtained. No such aid shall be located within the territorial jurisdiction of any foreign country without the consent of the government thereof. Nothing in this title shall be deemed to limit the authority granted by the [Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.)] *Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)*, or by the provisions of chapter 167 of title 10.

Section 91 of that title

[§ 91 Safety of naval vessels

[The captain of the port, Coast Guard district commander, or other officer of the Coast Guard designated by the Commandant thereof, or the Governor of the Panama Canal in the case of the territory and waters of the Canal Zone, shall so control the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, as to insure the safety or security of such United States naval vessels as may be present in his jurisdiction. In territorial waters of the United States where immediate action is required, or where representatives of the Coast Guard are not present, or not present in sufficient force to exercise effective control of shipping as provided herein, the senior naval officer present in command of any naval force may control the anchorage or movement of any vessel, foreign or domestic, to the extent deemed necessary to insure the safety and security of his command.]

§ 91. Safety of naval vessels

(a) The Secretary may control the anchorage and movement of any vessel in the navigable waters of the United States to ensure the safety or security of any United States naval vessel in those waters.

(b) If the Secretary does not exercise the authority in subsection (a) of this section and immediate action is required, the senior naval officer present in command may control the anchorage or movement of any vessel in the navigable waters of the United States to ensure the safety and security of any United States naval vessel under the officer's command.

(c) If a person violates, or a vessel is operated in violation of, this section or a regulation or order issued under this section, the person or vessel is subject to the enforcement provisions in section 13 of the Ports and Waterways Safety Act (33 U.S.C. 1232).

Section 146 of That Title

§ 146. United States Postal Service

Coast Guard facilities and personnel may be utilized for the transportation and delivery of mail matter during emergency conditions or at isolated locations under such arrangements as may be satisfactory to the Secretary and the [Postmaster General] *United States Postal Service.*

Chapter 11 of that title

SECS. 211–430 * * *

SPECIAL PROVISIONS

[431. Personnel of former Life Saving Service]
432. Personnel of former Lighthouse Service
[433. Personnel of former Bureau of Marine Inspection and Navigation and Bureau of Customs
[434. Personnel appointed as constructors]
435–437. [Repealed]
[438. Laws not applicable to warrant officers of former Life Saving Service, Lighthouse Service, Bureau of Marine Inspection and Navigation, and Bureau of Customs]

Section 431 of that title

[§ 431. Personnel of former Life Saving Service

[(a) If any keeper or member of a crew of a Coast Guard station shall be so disabled by reason of any wound or injury received or disease contracted in the Coast Guard in the line of duty as to unfit him for the performance of duty, such disability to be determined in such manner as shall be prescribed in the regulations of the Coast Guard, he shall be continued upon the rolls of the Coast Guard and entitled to receive his full pay during the continuance of such disability, not to exceed the period of one year, unless the Commandant shall recommend, upon a statement of facts, the extension of the period through a portion or the whole of another year, and said recommendation receive the approval of the Secretary of the Treasury as just and reasonable; but in no case shall said disabled keeper or member of a crew be continued upon the rolls or receive pay for a longer period than two years.

[(b) Any individual who served in the former Life Saving Service of the United States as a keeper or surfman, and who on account of being so disabled by reason of a wound or injury received or disease or loss of sight contracted in such service in line of duty as to unfit him for the performance of duty was continued upon the rolls of the service for an aggregate period of one year or more under the provisions of subsection (a) of this section, and who ceased to be a member of such service on account of such disability, which disability has been continuous up to and including April 14, 1930, shall, upon making due proof of such facts in accordance with such rules and regulations as the Secretary of the Treasury may prescribe, be awarded compensation for such injury at the rate of 100 per centum of the pay he was receiving at the time of his separation from such service, such compensation to commence from April 14, 1930, and continue during his natural life. No such individual shall receive a pension, pay, or other allowance under any other law of the United States for the same period for which he receives retired pay under the provisions of this section.

[(c) No agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of subsection (b) of this section shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than $10, which sum shall be payable only on the order of the Secretary of the Treasury; and any person who shall violate any of the provisions of this subsection, or shall wrongfully withhold from the claimant the whole or any part of retired pay allowed or due such claimant under said subsection, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every offense, be fined not exceeding $500 or be imprisoned not exceeding one year, or both, in the discretion of the court.]

Section 432 of that title

§ 432. Personnel of former Lighthouse Service

(a)–(f) * * *

(g) *(1)* The head of the department in which the Coast Guard is operating, under regulations prescribed by him, may regulate the hours of duty and the pay of civilian keepers of lighthouses and civilians employed on lightships and other vessels of the Coast Guard, but such personnel may be called upon for duty in emergency circumstances or otherwise at any time or all times. The existing system governing the pay of such employees may be continued or changed except that overtime compensation, night differential, or extra pay for duty on holidays shall not be paid to such employees. In lieu thereof additional annual compensation may be authorized, which may be prescribed either as a fixed differential or as a percentage of the basic compensation otherwise applicable to such employees. In no case shall basic compensation exceed $15,000 per annum, except that nothing contained in this subsection shall operate to decrease the basic compensation of any person employed by the Coast Guard on the date of enactment of this subsection, and in no case shall additions thereto exceed 25 percent of such basic compensation. Provision may be made for compensatory absence from

duty when conditions of employment result in confinement because of isolation or in long periods of continuous duty; and provisions may likewise be made for extra allowance for service outside of the continental limits of the United States. [The additional compensation authorized herein shall be included in any computation of compensation for purposes of the Lighthouse Service Retirement Act.]

(2) The additional compensation authorized by this subsection shall be included in any computation of compensation under section 6 of the Act of June 20, 1918 (33 U.S.C. 763).

Section 433 of that title

[§ 433. Personnel of former Bureau of Marine Inspection and Navigation and Bureau of Customs

[(a) Included in the total number of commissioned officers authorized by section 42 of this title shall be four hundred and fifty-three extra numbers to which the President is authorized to appoint only the personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs who on March 1, 1942, held the civil service rating of CAF–9 or P–3, or above. In the event that any person from among the personnel eligible to fill such extra numbers does not qualify, or who, being qualified does not accept a commission, the extra numbers not so filled shall be reserved pending the separation of such persons from the Coast Guard by retirement, transfer, resignation, death, or other cause. Upon such separation, each vacancy so reserved, and each vacancy created by the unavailability for appointment of such personnel, or by the retirement, resignation, death, or other separation from the active military service of the Coast Guard of such personnel, shall increase by one the authorized number of line officers, and decrease by one the authorized number of extra numbers.

[(b) Any person commissioned from the personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs who on March 1, 1942 held civil service rating of CAF–9 or P–3, or above, shall be an extra number in any rank to which he may be promoted. He shall be eligible for promotion, if otherwise qualified, at such time as the regular line officer who is his running mate becomes eligible for promotion, and shall be examined only with respect to those qualifications which pertain to his specialty.

[(c) No personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs who were transferred from those bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, shall be required to undergo further professional, physical, or mental examinations as a prerequisite to original commissioning, appointment, or enlistment, and the physical standards for such personnel while serving in the Regular Coast Guard shall not be greater than those applicable generally to civilian employees under civil-service laws and regulations.

[(d) Any personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs transferred from those bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, who enlist in

the Coast Guard shall be subject to the provisions of subsection (c), and (e)–(h) of this section.

[(e) Accrued military leave of any personnel of the former Bureau of Marine Inspection and Bureau of Customs transferred from those bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, who are members of the Coast Guard Reserve or the Naval Reserve on active duty, and who are commissioned, appointed, or enlisted, shall be credited to them upon such commissioning, appointment, or enlistment.

[(f) In computing length of service for purposes of retirement of personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs transferred from those bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, who are commissioned, appointed, or enlisted, there shall be included, in addition to all service now or hereafter creditable by law, all service as a civilian employee of the United States within the purview of subchapter III of Chapter 83 of title 5; and for all purposes of pay, so much of the service as was rendered as a civilian employee in the former Bureau of Marine Inspection and Navigation (including its predecessors, the Bureau of Navigation and the Steamboat Inspection Service), in the Bureau of Customs and in the Coast Guard. Such service for both retirement and pay purposes shall be classified as commissioned, warrant, or enlisted depending upon which status the person assumes upon his entry into the Regular Coast Guard. Service covering the same period shall not be counted more than once.

[(g) Any such person shall not be entitled to any retirement benefits under any laws relating to the retirement of civilian personnel of the Federal Government, but shall be entitled upon claim therefor to a return of the total contributions made by him to the retirement fund with interest thereon and, in addition, to eligibility for retirement benefits provided by law for members of the Regular Coast Guard, he shall, if his total service in the Federal Government, civil plus military, is fifteen years or over, be entitled, upon reaching the statutory retirement age for military personnel of the Regular Coast Guard, to retirement pay amounting to 75 percent of his active-duty pay at the time of such retirement; and, in the administration of applicable laws for physical disability retirement, a disability shall be deemed to have been incurred incident to Coast Guard service if the cause of such disability is not due to vicious habits, intemperance, or misconduct.

[(h) No personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs transferred from those bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, who are commissioned, appointed, or enlisted in the Coast Guard shall suffer any reduction in annual compensation, including allowances, below the compensation applicable to his permanent civil-service position at the time of such commissioning, appointment, or enlistment, exclusive of overtime compensation, and the civil-service status, tenure, seniority, and compensation of any such person who for any reason

is not commissioned, appointed, or enlisted under the provisions of said sections shall not be impaired by reason of said sections.

[(i) No personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs transferred from those Bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, who are serving as commissioned officers in the Coast Guard, shall be required to retire from active service uner the provisions of section 288 of this title prior to completion of thirty years of active commissioned service, including service creditable for retirement purposes under this section, nor shall any such officers be subject to the provisions of section 289 of this title.]

Section 434 of that title

[§ 434. Personnel appointed as constructors

[In computing length of service of a person commissioned under the provisions of section 8 of the Act entitled "An Act to readjust the commissioned personnel of the Coast Guard, and for other purposes", approved July 3, 1926 (44 Stat. 817), there shall be included, in addition to all service now or hereafter creditable by law, for all purposes of retirement, all services as a civilian employee of the United States within the purview of sections subchapter III of chapter 83 of title 5; and for all purposes of pay, so much of such service as was rendered as a civilian employee in the Coast Guard. Service covering the same period shall not be counted more than once.]

Section 438 of that title

[§ 438. Laws not applicable to warrant officers of former Life Saving Service, Lighthouse Service, Bureau of Marine Inspection and Navigation, and Bureau of Customs

[Sections 101, 515, 555–557, 559–565, 597–599, 745, 1164–1166, 1263, 1293, 1371, and 1401 of title 10, do not affect any right, privilege or benefit provided for warrant officers by section 431, 432, or 433 of this title.]

Section 829 of that title

§ 829. Radio station deemed government station

Any radio station, while assigned to authorized Coast Guard duty shall be deemed to be a radio station of the Coast Guard and a "government station" within the meaning of [Section] *section* 305 of the Communication Act of 1934 (47 U.S.C. 305).

Section 830 of that title

§ 830. Availability of appropriations

(a) Appropriations of the Coast Guard shall be available for the payment of actual necessary traveling expense and subsistence, or communtation of ration allowance in lieu of subsistence, of members of the Auxiliary assigned to authorized specific duties and for actual necessary expenses of operation of any motorboat, yacht,

aircraft, or radio station when assigned to Coast Guard duty, but shall not be available for the payment of compensation for personal services, incident to such operation, other than to personnel of the Coast Guard or the Reserve. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged motorboat, yacht, aircraft, or radio station and for the constructive or actual loss of any motorboat, yacht, aircraft, or radio station, where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual of such motorboat, yacht, aircraft, or radio station rests with the Coast Guard.

(b) The Secretary may pay interest on a claim under this section in any case in which a payment authorized under this section is not made within 60 days after the submission of the claim in a manner prescribed by the Secretary. The rate of interest for purposes of this section shall be the annual rate established under section 6621 of the Interal Revenue Code of 1954.

TITLE 26, UNITED STATES CODE

Section 9503 of that title

§ 9503. Highway Trust Fund

(a)–(b) * * *

(c) EXPENDITURES FROM HIGHWAY TRUST FUND.—(1)–(3) * * *

(4) Transfers from the trust fund for motorboat fuel taxes.

(A) Transfer to Boat Safety Account.

(i) In general. The Secretary shall pay from time to time from the Highway Trust Fund into the Boat Safety Account in the Aquatic Resources Trust Fund amounts (as determined by him) equivalent to the motorboat fuel taxes received on or after October 1, 1980, and before October 1, 1988.

(ii) Limitations—

(I) Limit on transfers during any fiscal year.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed [$45,000,000] *$60,000,000.*

(II) Limit on amount in fund. No amount shall be transferred under this subparagraph if the Secretary determines that such transfer would result in increasing the amount in the Boat Safety Account to a sum in excess of [$45,000,000] *$60,000,000.*

(B)–(D) * * *

(E) DETERMINATION.—The amount of payments made under this paragraph after October 1, 1986 shall be determined by the Secretary in accordance with the Department of the Treasury's Report to Congress of June 1986 entitled "Gasoline Excise Tax

Revenues Attributable to Fuel Used in Recreational Motorboats".

TITLE 46, UNITED STATES CODE

Section 2101 of that title

§ 2101. General definitions

In this subtitle—

(1)–(11a) * * *

(11b) "fish processing vessel" means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, *freezing,* or brine chilling.

(11c)–(15) * * *

(15a) "mobile offshore drilling unit" means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

(16) * * *

(17) "nautical school vessel" means a vessel operated by or in connection with a nautical school *or an educational institution under section 13 of the Coast Guard Authorization Act of 1986.*

(18)–(46) * * *

Section 3305 of that title

§ 3305. Scope and standards of inspection

(a)–(b) * * *

(c) A nautical school vessel operated by a civilian nautical school *or by an educational institution under section 13 of the Coast Guard Authorization Act of 1986* shall be inspected like a small passenger vessel or a passenger vessel, depending on its tonnage.

Section 4102 of that title

§ 4102. Safety equipment

(a)–(d) * * *

(e) Each uninspected fishing, fish processing, or fish tender vessel operating on the high seas shall be equipped with the number and type of emergency position indicating radio beacons prescribed by regulation.

Chapter 75 of that title

CHAPTER 75. GENERAL PROCEDURES FOR LICENSING, CERTIFICATION, AND DOCUMENTATION

Section
7501. Duplicates
7502. Records
7503. Dangerous drugs as grounds for denial
7504. Travel and expense reimbursement.

§§ 7501-7503 * * *

§ 7504. Travel and expense reimbursement

When a requirement to qualify for the issuance of, or endorsement on, a certificate, license, or document under this part is administered at a place at the request of an applicant or an applicant's representative, the applicant or representative may reimburse the Secretary for the travel and subsistence expenses incurred by the personnel assigned to perform the administration of the requirement. Amounts received as reimbursement under this section shall be credited to the appropriation for operating expenses of the Coast Guard.

Section 8101 of that title

§ 8101. Complement of inspected vessels

[(a) The certificate of inspection to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel.**]**

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on—

(1) a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel; and

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit.

(b)-(h) * * *

Section 8301 of that title

§ 8301. Minimum number of licensed individuals

(a)-(b) * * *

(c) Subsection (a) of this section does not apply to a fishing or whaling vessel, *a mobile offshore drilling unit when on location,* or a yacht.

(d) * * *

Section 8701 of that title

§ 8701. Merchant mariners' documents required

(a) This section applies to a merchant vessel of at least 100 gross tons except—

(1) a vessel operating only on rivers and lakes (except the Great Lakes);

(2) a barge (except a seagoing barge or a barge to which chapter 37 of this title applies);

(3) a fishing, or fish tender, or whaling vessel or yacht;

(4) a sailing school vessel with respect to sailing school instructors and sailing school students;

(5) an oceanograhic research vessel with respect to scientific personnel;

(6) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products; [and]

(7) a fish processing vessel (except a vessel to which clause (6) of this subsection applied) with respect to individuals on board primarily employed in the preparation of fish or fish products or in a support position not related to navigation[.]; *and*

(8) a mobile offshore drilling unit with respect to individuals, other than crew members required by the certificate of inspection, engaged on board the unit for the sole purpose of carrying out the industrial business or function of the unit.

(b)–(d) * * *

Section 8904 of that title

§ 8904. Towing vessels

(a) A towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer), shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(b) A vessel that tows a disabled vessel for consideration shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

Section 10101 of that title

§ 10101. Definitions

In this part—

(1) "master" means the individual having command of a vessel [owned by a citizen of the United States].

(2) "owner" means the person to whom the vessel belongs.

(3) "seaman" means an individual (except scientific personnel, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel [owned by a citizen of the United States].

(4) "fishing vessel" includes—

(A) a fish tender vessel; or

(B) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

Section 10313 of that title

§ 10313. Wages

(a)–(d) * * *

(e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht. [However, this subsection applies to a vessel taking oysters.]

(f)–(g) * * *

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht. [However, subsections (f) and (g) apply to a vessel taking oysters.]

(i) * * *

Section 10314 of that title

§ 10314. Advances

(a)–(d) * * *

(e) This section does not apply to a fishing or whaling vessel or a yacht. [However, this section applies to a vessel taking oysters.]

Section 10504 of that title

§ 10504. Wages

(a) After the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement required by section 10502 of this title and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht. [However, this subsection applies to a vessel taking oysters.]

(b)–(c) * * *

(d) Subsections (b) and (c) of this section do not apply to:

(1) a vessel engaged in coastwise commerce.

(2) a yacht.

(3) a fishing vessel [(except a vessel taking oysters)].

(4) a whaling vessel.

(e) * * *

Section 10505 of that title

§ 10505. Advances

(a)–(c) * * *

(e) This section does not apply to a fishing or whaling vessel or a yacht. [However, this section applies to a vessel taking oysters.]

Section 13103 of that title

§ 13103. Allocations

(a)–(c) * * *

(d) Before making any allocation under this section for a fiscal year, the Secretary shall retain not less than 1 percent nor more than 2 percent of the amount appropriated for that year for State recreational boating safety programs for the payment of costs of administration of this chapter.

Section 13106 of that title

§ 13106. Authorization of contract spending

(a) The Secretary may expend in each of the fiscal years 1985, 1986, 1987, and 1988, subject to amounts as are provided in appropriations laws for liquidation of contract authority, an amount equal to [two-thirds] *one-half* of the amount transferred for such fiscal year to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 9503(c)(4)). The amount shall be allocated as provided under section 13103 of this title and shall be available for State recreational boating safety programs as provided under the guidelines established under subsection (b) of this section. Amounts authorized to be expended for State recreational boating safety programs shall remain available until expended and are deemed to have been expended only if an amount equal to the total amounts authorized to be expended under this section for the fiscal year in question and all prior fiscal years have been obligated. Amounts previously obligated but released by payment of a final voucher or modification of a program acceptance shall be credited to the balance of unobligated amounts and are immediately available for expenditure.

(b) * * *

(c) An amount equal to [one-third] *one-half* of the amount transferred for each fiscal year to the Boat Safety Account under section 9503(c)(4)) is available to the Secretary for expenditures out of the operating expenses account for the Coast Guard for services provided by the Coast Guard for recreational boating safety, including services provided by the Coast Guard Auxiliary. Amounts made available by this subsection shall remain available until expended.

THE ACT OF JUNE 21, 1963

(Public Law 88–45)

That [after fiscal year 1964, funds may not be appropriated to or for the use of the Coast Guard for the construction of shore or offshore establishments, or for the procurement of vessels or aircraft,

unless the appropriation of such funds has been authorized by legislation enacted after December 31, 1963.]

SEC. 2.-SEC. 3. * * *

THE ACT OF SEPTEMBER 15, 1980

(Public Law 96-350)

[That (a) it is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States on the high seas, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

[(b) It is unlawful for a citizen of the United States on board any vessel to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

[(c) It is unlawful for any person on board any vessel within the customs waters of the United States to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

[(d) It is unlawful for any person to possess, manufacture, or distribute a controlled substance—

[(1) intending that it be unlawfully imported into the United States; or

[(2) knowing that it will be unlawfully imported into the United States.

[(e) Subsections (a), (b), and (c) do not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of his duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

[(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court for the District of Columbia.

[(g)(1) Any person who commits an offense defined in subsection (a), (b), (c) or (d) of this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Act.

[(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Act if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

[(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

[SEC. 2. As used in this Act—

[(a) "Customs waters" means those waters as defined in section 401(j) of the Tariff Act of 1930 (19 U.S.C. 1401(j)).

[(b) "High seas" means all waters beyond the territorial seas of the United States and beyond the territorial seas of any foreign nation.

[(c) "Vessel of the United States" means any vessel documented under the laws of the United States, or numbered as provided by the Federal Boat Safety Act of 1971, as amended, or owned in whole or in part by the United States or a citizen of the United States, or a corporation created under the laws of the United States, or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accordance with article 5 of the Convention on the High Seas, 1958.

[(d) "Vessel subject to the jurisdiction of the United States" includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the Convention on the High Seas, 1958.

[(e) "Comprehensive Act" means the Comprehensive Drug Abuse Control and Prevention Act of 1970 (21 U.S.C. 801-966). All terms used in this Act that are defined in the Comprehenisve Act have the meanings assigned to them by that Act.

[SEC. 3. Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

[SEC. 4. Any property described in section 511(a) of the Comprehensive Act that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Act.]

That this Act may be cited as the "Maritime Drug Law Enforcement Act".

SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

(b) For purposes of this section, a "vessel of the United States" means—

(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

(2) a vessel owned in whole or part by—

(A) the United States or a territory, commonwealth, or possession of the United States;

(B) a State or political subdivision thereof;

(C) a citizen or national of the United States; or

(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

(c)(1) For purposes of this section, a "vessel subject to the jurisdiciton of the United States" includes—

(A) a vessel without nationality;

(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

(D) a vessel located within the customs waters of the United States; and

(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United Staes law by the United States.

Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under subparagraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

(2) For purposes of this section, a "vessel without nationality" includes—

(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

(3) For purposes of this section, a claim of nationality or registry only includes:

(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

(B) flying its flag nation's ensign or flag; or

(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign nation, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) is such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

SEC. 4. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).

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